IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) DAIRY NO.10948 OF 2020

(Under Article 32 of the Constitution of India)

(Public Interest Litigation)

IN THE MATTER OF:

National Alliance of Journalists & Ors. ...Petitioners

Versus

Union of India & Ors. ...Respondents

PAPER BOOK

COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENT NO. 2

ADVOCATE ON RECORD FOR RESPONDENT NO. 2:

RAJAT SEHGAL

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I, Yogesh Pawaskar, s/o Sh. Bhaskar Pawaskar aged about 48 years, having office at I.N.S building, Rafi Marg, New Delhi-110001, do hereby swear the present counter affidavit and state as under:

I am the Deputy Secretary of the Respondent No. 2, and as such am conversant with the facts of the present case based on the office records, information received in the official capacity and as such duly competent to sign, verify, depose and institute the present

Petition and to do all other acts and things that may be necessary on behalf of the Respondent No. 2. The Minutes of Meeting dated 07.12.2019 authorizing me are annexed herewith as **Annexure-R2/1** at page **46**.

That, at the outset, the answering Respondent reserves liberty to file a detailed Counter-Affidavit to the present Writ Petition as and when called upon to do so by this Hon'ble Court.

PRELIMINARY OBJECTIONS:

1. At the very outset, the answering Respondent denies all claims, allegations and averments made by the Petitioner in the present Petition, unless specifically and explicitly admitted.

2. It is most humbly submitted that the present Petition is bad for non-joinder of necessary parties. It is vaguely alleged in the petition that in regard to some workers and employees, whose particulars have not been furnished, government advisories are being violated by certain named employers/media sectors and the respondent agencies are paying scant regard to it. The said employers have not been arrayed as parties. It is settled law that no order can be passed unless necessary parties are impleaded in the petition. A Constitution Bench of the Hon'ble Supreme Court in ***Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar &Anr.***, ***AIR 1963 SC 786*** has categorically upheld this principle.

3. It is stated that additionally the instant petition is fatally flawed for misjoinder of causes of action. The Petition seeks to treat "Media" as a class and has sought to litigate a class action lis.

For this the Petition seems to identify only the print media, the digital media and the audio-visual media as members of the class while leaving out the film industry, social media companies and other such forms of communication media including but not limited to internet service providers, telecom companies and the like. Several causes of action have been sought to be combined by the Petitioners. Some employees and workers are alleged to have been retrenched, some have allegedly taken pay cuts and some establishments have been alleged to have shut down. The causes of action are distinct as it is only the print media which is regulated in employee matters by virtue of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (hereinafter referred to as the "Working Journalists Act, 1955" or the "WJ Act") and the other media categories are unregulated.

4. That the Petition appears to urge rights that inter alia purport to stem from the Working Journalist Act, 1955 and the Industrial Disputes Act., 1947. It is stated that the instant Petition is not maintainable and therefore liable to be returned as this Hon'ble Court is not clothed with the jurisdiction to try and entertain the instant petition. It is settled law that where one is seeking to agitate rights given by a certain enactment then one can seek remedy under that enactment only. The Hon'ble Supreme Court upheld this principle in the case of ***The Premier Automobiles Ltd. vs. Kamlekar Shantaram Wadke of Bombay and Ors. [1976]1SCR 427***.

5. That the writ remedy, especially one under Article 32 of the Constitution of India can be invoked only in the most

extraordinary circumstances. Even read at its highest, there is no averment in the Petition of any facts which would justify the invoking of such an extraordinary remedy when alternate remedies are available to the Petitioners.

6. That the Union of India has been impleaded with the sole purpose of bringing the lis under Article 32 in as much as a writ would ex facie not lie against the answering respondent as the answering respondent is neither "State" within the meaning of Article 12 nor does it perform any public functions as envisaged and explained by the Hon'ble Supreme Court in the case of ***Jatya Pal Singh &Ors. vs. Union of India &Ors., (2013) 6 SCC 452.*** **That it is also pertinent to mention here that relief prayed for by the petition is beyond the Powers and purview of the answering Respondent.**

7. That the answering Respondent has been erroneously impleaded in the present petition in an assumed representative capacity. The Petitioners by erroneously impleading the answering Respondent are trying to wriggle out of impleading individual newspapers. It is pertinent to mention here that only 3 of these individual newspapers, as mentioned in the Petition, are members of the Respondent No. 2 Society. The answering Respondent has no authority over the alleged actions of these individual newspapers and is therefore not connected to the subject matter in any way. That it may also be noted that no formal complaint was ever filed with the answering Respondent with respect to the alleged actions either.

8. That the instant Petition raises several disputed questions of fact such as the size of the impugned industrial establishments,

the category of affected employees, whether they fall under the definition of "workmen", whether the alleged actions have been taken etc. These are not matters that can be gone into in writ jurisdiction.

9. That it is additionally stated that the present Petition prays for a writ in the nature of a blanket ban on wage cuts, termination and closure by and of, all newspaper establishments, without paying due consideration to the reality that not all newspaper establishments can be considered as equal. Different factors such as revenue, cost of circulation, total number of employees, regional factors etc put different newspaper establishments at different footings with respect to their capacity to pay and sustain in these most unfortunate of times. The Petition proceeds on the assumption that all industrial establishments of all newspapers are factories employing more than 100 workmen in the preceding 12 months and are therefore covered by Chapter VB of the Industrial Disputes Act, 1947. As per the Industrial Disputes Act, 1947 there are three categories of industrial establishments, however the Petitioners have considered only one such category. The Petitioners have failed to consider that the other two classes, namely industrial establishments which are not necessarily “factories” as defined by the Factories Act, 1948 - (i) having 50 to 100 workmen and (ii) those having less than 50 workmen, have the liberty as per the Act to enforce retrenchments, closures and lay-offs without seeking the government's prior permission. By laying the Petition and seeking the reliefs prayed for, the Petition therefore wrongly urges this Court to legislate the application

of Chapter VB of the Industrial Disputes Act, 1947 to establishments that are not covered under the said Chapter.

10. That the notifications of the Ministry of Home Affairs and Ministry of Labour and Employment and various state governments as cited by the petitioners are vague, arbitrary, illegal, unconstitutional and violative of Article 14 of the Constitution of India and are also ultra vires the Acts under which they have been promulgated.

11. That advisories issued by the Labour and Employment Ministry, Government of India do not differentiate between the workers who report to work and the workers who refuse to work, when it comes to entitlement for wages for lockdown period as concerned, and are thereby contrary to the principle of 'Equal work, equal pay'. Further, the notifications and advisories do not differentiate between workers engaged in establishments which are permitted to operate during the lockdown period. Therefore, a worker in such an establishment can continue to feel entitled to wages despite not showing up for work. This is contrary to Article 14 as well as Article 39 of the Constitution of India because the principles of 'Equal work, equal pay' and 'No work, no pay' are both violated.

12. That the alleged defaults are made by separate newspaper establishments in respect of separate and distinct contractual agreements. Consideration needs to be placed on the fact that a large number on newspaper establishments are small establishments having no factory of their own and/ or do not employ more than 100 workers and therefore do not, as per Sections 25L and 25K, qualify to be covered under the

provisions of Chapter V-B of the Industrial Disputes Act, 1947. The relevant provisions are represented below:

25K. Application of Chapter V-B.- (1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than [one hundred] workmen were employed on an average per working day for the preceding twelve months.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

25L. Definitions.- For the purposes of this Chapter-

(a) "industrial establishment" means-

(i) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948 (63 of 1948);

(ii) a mine as defined in clause (j) of sub-section (1) of Section 2 of the Mines Act, 1952 (35 of 1952); or

(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);

(b) notwithstanding anything contained in sub-clause (ii) of clause (a) of Section 2,-

(i) in relation to any company in which not less than fifty one per cent of the paid-up share capital is held by the Central Government, or

(ii) in relation to any corporation not being a corporation referred to in sub-clause (i) of clause (a) of section 2] established by or under any law made by Parliament, the Central Government shall be the appropriate Government

13. That in passing sweeping orders to all employers without paying regard to the principle of intelligible differentia, the government has overreached and unduly assumed authority not granted under the Disaster Management Act, 2005. That nothing in the Act provides or grants power to impose financial obligations on employers for continued payment of wages to its workers/employees during any disaster. That neither the National Disaster Management Authority nor the National Executive Committee constituted under the Act have no power under Section 7 and 10, respectively, to direct the employers to make payment to their workers, without any deduction, during the period of lockdown. Therefore, the government orders are passed beyond the legislative competence and therefore, ultra vires the Disaster Management Act, 2005.

14. That the Government may however invoke its powers under Sections 46, 47, 65 and 66 of the Disaster Management Act, 2005 to raise and direct funds and resources towards mitigation of the emergency. The onus to compensate workers is on the Government, which cannot be shifted upon employers in the private sector. Therefore, the scope of the DM Act, 2005 is crystal clear. In fact, the scope of the statute is effective management of disasters by the State and its appropriate authorities.

15. That at best, the advisories of the government can be considered as a moral or humanitarian obligation cast upon private establishments during lockdown. However, it is a settled principle of law that a moral obligation cannot be converted into a legal obligation. Dealing with morality and law, the Hon'ble Supreme Court of India in the case of ***RaghunathraoGanpatrao vs. Union of India, [1993] INSC 58,***observed as under:

> *"Morality in general is the art of directing the actions of men in such a way as to produce the greatest possible sum of good. Legislation ought to have precisely the same object. But although these two arts, or rather sciences, have the same end, they differ greatly in extent. All actions, whether public or private, fall under the jurisdiction of morals. It is a guide which leads the individual, as it were, by the hand through all the details of his life, all his relations with his fellows.*
>
> *Legislation cannot do this; and, if it could, it ought not to exercise a continual interference and dictation over the conduct of men. Morality commands each individual to do all that is advantageous to the community, his own personal advantage included. But there are many acts useful to the community which legislation ought not to command. There are also many injurious actions which it ought not to forbid, although morality does so. In a word legislation has the same center with morals, but it has not the same circumference".*

16. That a right that has been conferred pursuant to a statute cannot be abrogated by an order of an instrumentality of State, save and except by due process of law. Section 25M of the Industrial Disputes Act, 1947 recognizes that a natural calamity is likely to disrupt not just lives of individuals but also companies and other economic units and hence employers are permitted to lay-off their employees as a result of a natural calamity.

17. That it is settled law that if the object of the contract is lost, the contract is frustrated. Such premise is derived from Section 56 of the Indian Contract Act through the Doctrine of Frustration. In the case of ***Satyabrata Ghose vs. Mugneeram Bangurn& Co &Anr., (AIR 1954 SC 44)***it was held that 'impossible' has not been used in Section 56 of the Act in the sense of physical or literal impossibility. The performance of an act may not be literally impossible but it may be impracticable and useless, and if an untoward event or change of circumstances totally upsets the very foundation upon which the parties rested their bargain, it can very well be said that the promisor finds it impossible to do the act which he promised to do.

18. That the government orders are arbitrary or excessively invade the right of an employer. For many of the newspaper establishments, such a blanket ban, as prayed for, would effectively mean that all of these establishments will have to close down. The newspaper industry, which was already under a lot of pressure before the outbreak of the pandemic, has been hit very hard by the outbreak with advertisement revenues taking a hit and circulation revenues too going down. The orders fail to strike a proper balance between the freedom

guaranteed in Article 19(1)(g) and the social control permitted by clause 19 (6) of Constitution of India.

19. That even while fixing of wages by the Wage Board under the provisions of the Working Journalists Act, 1955, the capacity of the newspaper to pay, the rates and scales of wages recommended by it must be taken into consideration. The fundamental right of freedom to practice any trade and profession as enumerated under Article 19(1)(g) is infringed by such blanket orders of the government mandating pay of salaries.

In ***Indian Express Newspapers (Bombay) Private Ltd. &Ors. vs. Union of India***, ***AIR 1986 SC 515***- The constitutional validity of the Working Journalists Act, 1955, and the legality of the decision of the Wage Board, constituted thereunder, purporting to act under S. 9 of the Act was challenged. The petitioners in the said case contended on various grounds that the provisions of the impugned Act violated their fundamental rights under Articles 19(1)(a), 19(1)(g), 14 and 32 of the Constitution and that the decision of the Wage Board fixing the rates and scales of wages, which was arrived at without any consideration whatsoever as to the capacity of the newspaper industry to pay the same, imposed heavy a financial burden on the industry and spelled its total ruin and transgressed the principles of natural justice. Thus, it was prayed that the Act be declared illegal and void.

The Court upheld the constitutional validity of the impugned Act, with the sole exception of S. 5(1)(a)(iii) of the Act which infringed. Article 19(1)(g) of the Constitution. The section in

question was severable and the only ultra vires part of the Act. Section 9(1) of the Act, properly construed, made it incumbent on the Wage Board to take into consideration the capacity of the newspaper industry to pay the rates and scales of wages recommended by it, thus the point that challenged validity of decisions of wage board was not accepted. It was further held that there could be no doubt, in view of the interpretation of Art. 19(1)(a) of the Constitution, that liberty of the press was an essential part of the freedom of speech and expression guaranteed by that Article.

In ***Express Newspapers vs. Union of India, AIR 1958 SC 578*** this hon'ble court while setting aside the recommendations of the first wage board made the following observations:

"73. The principles which emerge from the above discussion are :

(1) that in the fixation of rates of wages which include within its compass the fixation of scales of wages also, the capacity of the industry to pay is one of the essential circumstances to be taken into consideration except in cases of bare subsistence or minimum wage where the employer is bound to pay the same irrespective of such capacity;

(2) that the capacity of the industry to pay is to be considered on an industry-cum-region basis after taking a fair cross section of the industry; and

(3) that the proper measure for gauging the capacity of the industry to pay should take into account the elasticity of demand for the product, the possibility of tightening up the

organisation so that the industry could pay higher wages without difficulty and the possibility of increase in the efficiency of the lowest paid workers resulting in increase in production considered in conjunction with the elasticity of demand for the product - no doubt against the ultimate background that the burden of the increased rate should not be such as to drive the employer out of business."

"239. The classification on the basis of gross revenue was attacked by the petitioners on the ground that in the gross revenue which is earned by the newspaper establishments, advertisement revenue ordinarily forms a large bulk of such revenue and the revenue earned by circulation of newspapers forms more often than not a small part of the same, though in regard to language newspapers the position may be somewhat different. Unless, therefore, the proportion of advertisement revenue in the gross revenue of newspaper establishments were taken into consideration, it would not be possible to form a correct estimate of the financial status of that newspaper establishment with a view to its classification. The petitioners on the other hand suggested that the profit and loss of the newspaper establishments should be adopted as the proper test and if that were adopted a different picture altogether would be drawn. The balance-sheets and the profit and loss accounts of the several newspaper establishments would require to be considered and it was contended that even if the gross revenue of a particular newspaper establishment were so large as to justify its inclusion on the basis of gross revenue in Class "A" or Class "B" it might be working at a loss and its classification as such would not be justified."

"252. Even though, the Wage Board classified the newspaper establishments into 5 classes from " A " to " E " on the basis of their gross revenue the proportion of the advertisement revenue to the gross revenue does not appear to have been taken into consideration nor was the essential difference which subsisted between the circulation and the paying capacity of the language newspapers as compared with newspapers in the English language taken into account. If this had been done, the basis of gross revenue which the Wage Board adopted would have been modified in several respects.

253. The grouping of the newspapers into chains or multiple units implied that the weaker units in those groups were to be treated as on a par with the stronger units and it was stated that the loss in the weaker units would be more than compensated by the profits in the more prosperous units. The impact of these proposals on groups of newspapers was only defended on principle without taking into consideration the result which they would have on the working of the weaker units. Here also the Chairman expressed the opinion that the Board was conscious that as a result of its decision, some of the journalists in the weaker units of the same group or chain may get much more than those working in its highest income units. He however stated that if the principle was good and scientific, the inevitable result of its application should be judged from the stand-point of Indian Journalism as a whole and not the burden it casts on a particular establishment. It is clear therefore, that this principle which found favour with the Wage Board was sought to be worked out without taking into

consideration the burden which it would impose upon the weaker units of a particular newspaper establishment".

In ***Indian Express Newspaper (P) Ltd. Vs. Union of India, AIR 1995 SC 965*** this Hon'ble Court explained the principals laid down in ***Express Newspapers vs. Union of India, AIR 1958 SC 578 and*** observed:

"4. We may now refer to the propositions of law laid down by this Court in the decision in Express Newspapers Ltd. case (supra). They are, among others, as follows -

(1) For the fixation of rates of wages which include within its compass, the fixation of scales of wages also, the capacity of the industry to pay is one of the essential circumstances to be taken into consideration except in cases of bare subsistence or minimum wages where the employer is bound to pay the same irrespective of such capacity. Under the provisions of the Act, it is not only open to, but incumbent upon the Wage Board to consider the capacity of the industry to pay, as an essential circumstance.

(2) The capacity of the industry to pay is to be considered on an industry-cum-region basis after taking a fair cross section of the industry.

(3) The proper measure of weighing the capacity of the industry to pay should take into account the elasticity of the demand for the product, the possibility of tightening up the organisation so that the industry could pay higher wages without difficulty and the possibility of increase in the efficiency of the lowest paid workers, resulting in increase in

production, considered in conjunction with the elasticity of the demand for the product against the ultimate background that the burden of the increased rate should not be such as to drive the employer out of business.

(4) The provisions of the Act as they stood then were not violative of the fundamental rights enshrined in Articles 14, 19(1)(a) and 19(1)(g) of the Constitution which provided for classification. The classification of the newspaper establishments on the basis of the gross revenue earned is not bad.

(5) The grouping of the newspaper establishments into chains or multiple units is justified having regard to the conditions of the newspaper industry in the country. There is nothing in the Act which militates against such grouping. The real difficulty however in the matter of grouping into chains or multiple units arises in connection with the capacity of the industry to pay. If a classification on the basis of gross revenue would be legitimately adopted by the Wage Board, the grouping into chains or multiple units could also be made. There is nothing in the Act to prohibit the treating of several newspaper establishments producing or publishing one or more newspapers, though in different parts of the country, as one newspaper establishment for the purpose of fixing the rates of wages. It would not be illegitimate to expect the same standard of employment and conditions of service in several newspaper establishments under the control of any person or body of persons whether incorporated or not. For an employer to think of employing one set of persons on higher scales of wages and another set of workers on lower scales of wages

would by itself be iniquitous, though it would be quite legitimate to expect the difference in scales having regard to the quality of the work required to be done, the conditions of labour in different regions of the country, the standard of living in those regions and other cognate factors. All these conditions would necessarily have to be borne in mind by the Wage Board in arriving at its decision in regard to the wage structure though the relative importance to be attached to one set or the other, may vary in accordance with the conditions in different areas or regions where the newspaper establishments are located.

(6) If the industry is divided into different classes, it may not be necessary to consider the capacity of each individual unit to pay. It would certainly be necessary to consider the capacity of the respective classes to bear the burden imposed on them. A cross section of these respective classes may have to be taken for careful examination and all relevant factors may have to be borne in mind in deciding what burden the class considered as a whole can bear."

20. That the monetary sustenance of the print media and entertainment sector largely thrives on the advertisement expenditure by industries such as FMCG, e-commerce, finance and automobile, which are hit by the economic slowdown, have scaled back expenditure in the advertising sector. With advertisement revenues now hitting rock bottom due to COVID-19 and online platforms gaining hype, the key sources of revenues for the print media are on the verge of depletion.

a. A report published by KPMG titled *"COVID-19: The many shades of a crisis- A media and entertainment sector perspective"*, suggests that the pandemic induced interruptions in the lives of people globally will consequently present a challenge to traditional forms of media as opposed to their digital counterparts.

b. In an article published by the Print on 20.04.20 titled *"Covid-19 Hits Print Media Hard — ads and circulation dip, editions see major digital push"* it was reported that**:**

"Over the last few days, however, residents across the country have unilaterally decided against letting vendors deliver newspapers at their doorsteps, fearing possible transmission."

"According to multiple industry sources, the move has hit the newspaper industry hard with advertisement revenues hitting rock bottom since the crisis started."

c. Due to the lack of advertisements, several prominent newspapers have been forced to drastically reduce their number of pages. The Delhi edition of Hindustan Times, for instance, now consists of only 14 pages, down from over 20 pages.

d. Newspaper establishments have been forced to shut down physical editions of newspapers because vendors have refused to deliver. *Moreover*, many resident welfare associations have banned the entry of any outsiders into colonies and buildings. As a result of newspapers not reaching homes in bigger cities, advertising revenues have

taken a big beating. It may also be noted that the Govt. of Maharashtra vide addendum 18.04.2020 and Order dated 21.04.2020 prohibited the door to door delivery of newspaper/magazines in Mumbai Metropolitan Region(MMR), Pune Municipal Corporation and all containment zones.

The Addendum dated 18.04.2020 and Order dated 21.04.2020 both passed by the Government of Maharashtra are annexed herewith as **Annexure-R2/2(colly)** at pages **47 to 49.**

21. That various studies and reports make it clear that the Newspaper Industry can only pay as long as it has the capacity to pay which in turn is dependent on the revenue produced by the establishment. In light of the current global calamity, newspaper revenues are facing a steep fall due to decrease in advertisement revenue. Many newspapers have had to close down while others are decreasing their number of pages. In a situation like this, mandating these establishments to keep on paying the same amount of salaries, while the revenues are dropping, would effectively mean that all of these establishments will have to close down. This is violative of both Article 19(1)(g) and 14 of the Constitution of India.

22. That this Hon'ble Court has itself recognised the importance of advertisement revenue for the survival of the newspapers. On average, the newsprint cost of a newspaper establishment is about 40-60% of its expenses while wages are about 20-30% of the expense. The net circulation revenue which is the cover price of a newspaper covers only a small portion of the total

cost. Hence the lifeblood of a newspaper is revenue from advertisements. That it directly affects the right under Art 19(1)(a) is recognised by this Court in ***Express Newspapers Pvt. Ltd. And Ors. vs. Union of India (AIR 1958 SC 578)***. In the present situation, there has been a drop of approximately 80-85% in Government advertisement and a drop of approximately 90% in other advertising.

23. That in the case of ***ABP News and Anr. vs. Union of India and Ors., (2014) 3 SCC 327*** this Court upheld the Wage Board awards inter alia on the ground that the capacity to pay was a factual determination done by the Wage Board.

24. That in the present circumstances and for the foreseeable future, the capacity to pay manifestly does not exist anymore. This Court has recognised that a change in circumstances can even lead to an otherwise constitutional enactment being declared ultra vires the Constitution. This Hon'ble Court in ***John Vallamattom and Anr. vs. Union Of India (2003 6 SCC 611)*** categorically held that *"In any view of the matter even if a provision was not unconstitutional on the day on which it was enacted or the Constitution came into force, by reason of facts emerging out thereafter, the same may be rendered unconstitutional"*. Thus, pitching it at its lowest, the obligation to continue employing people and to continue paying wages at the pre-crisis levels is no longer existent.

25. That it has been time and again opined by this Hon'ble Court, in landmark cases such as ***Som Prakash Rekhi vs. Union of India(1981) 1 SCC 449, Gurmail Singh &Ors. vs. State of Punjab and Others (AIR 1982 SC 1466), Bhupendra Nath***

Hazarika &Anr. vs. State of Assam &Ors. (1987 AIR 2354), State of Jharkhand and Anr. vs. Harihar Yadav and Ors(2014)2SCC114 that the Government/State is a model employer for all other employers, and in times of a calamity of global proportions, when even the model employer is resorting to actions like wage cuts in order to control its expenditure, its hypocritical and discriminatory for the Government to advise or mandate private institutions not to resort to such activities. The State and center, inter alia, have resorted to the following measures for reducing government expenditure:

a. The salaries of the Hon'ble President of India, Hon'ble Prime Minister of India and other respected members of parliament have been slashed by 30% for one year.

b. The MPLADs (Members of Parliament Local Area Development Scheme) fund has been discontinued till 2022.

c. Even a prominent Public Sector Undertaking such as the airline Air India has decided to implement a 10% cut in the allowances of all its employees in a bid to tide over the stress arising out of the Coronavirus epidemic.

d. Government officials of various levels in Telangana have taken pay cuts - 75 per cent cut in the salaries of the Chief Minister, State cabinet, MLCs, MLAs, State Corporation Chairpersons and Local Bodies representatives. Whereas, there will be a 60 per cent salary cut of IAS, IPS, IFS and other such Central Services Officers and for all other category of employees, there will be a 50 per cent salary cut. For Class IV, outsourcing and contract employees,

there will be a 10 per cent cut in the salary while for all category of pensioners there will be 50 per cent cut.

e. Even though the Government of Maharashtra by notification dated April I, 2020 has clarified that the salaries of all the government employees in State of Maharashtra shall be paid in two instalments, the Government of Maharashtra has directed all the private establishments to pay 100% of the salaries when the private establishments are under complete lockdown.

26. That in order to provide financial assistance to workers during COVID-19 pandemic, intent with which the said Government Orders were issued, Government of India ought to have considered that Provident Fund Department has bounteous accumulation of over Rs. 351 crores as unclaimed Provident Fund Deposits' and this amount can be utilised to financial support the workers at the times of these unprecedented crisis. Since this amount has been accumulated from the contribution of the Industry and its workforce, it is appropriate to utilize a part of this amount to pay wages to the workers and ensure survival of both employer and employees.

27. That this Hon'ble Court in the case of ***Supdt. of Taxes v. OnkarmalNathmal Trust, (1976) 1 SCC 766*** has held that:

"62. The law in its most positive and peremptory injunctions, is understood to disclaim, as it does in its general aphorisms, alt intention of compelling performance of that which is impossible.

"...where the law creates a duty or charge, and the party is disabled to, perform it, without any default in him, and has no remedy over, there the law will in general excuse him, and though impossibility of performance is in general no excuse for not performing an obligation which a party has expressly undertaken by contract, yet when the obligation is one implied by law, impossibility of performance is good excuse.

Under certain circumstances compliance with the provisions of statutes which prescribe how something is to be done will be excused. Thus, in accordance with the maxim of law, lex non cogitad impossibilia, if it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like the act of God or the King's enemies, these circumstances will be taken as a valid excuse".

28. That emergency situations like the present calamity being faced by the world, affect everyone alike, whether be employee or employer. The disregard to the employers' plight could drive the establishment to the ground and could result in the breakdown of the media industry. Journalism forms the fourth pillar of democracy, and letting these establishments run into the ground could lead to horrible ramifications. The lack of business due to the lockdown, the impact on business due to COVID – 19 and the continued payment of salaries and wages could potentially drive the private establishments into insolvency, unless suitable economic policies and financial

measures are brought in by the Government to safeguard the industry and economy.

29. That Constitution casts duty upon the State to secure to its citizens rights guaranteed by the Constitution. When there is a natural calamity, the State as guardian of the people (*Parens Patria*) is obliged to provide help, assistance and support to the victims of such natural calamities to help them to save their lives. The rights of the citizens and the obligations of the State cannot be assigned to a private establishment by way or an order under the Disaster Management Act, 2005. Various Governments around the world have come up with Stimulus packages to safeguard both the industry as well as its workmen. The News Week, a U.S. based journalistic organisation on 10.04.2020 published an article titled *"**Here's How U.S. Coronavirus Stimulus Package Compares to Other Countries Around the World"***and the Times of India published an article titled ***"Employers Need a Helping Hand to Prevent Lay-offs"*** showing the stimulus packages being offered by governments around the world:

    a. Britain's government is issuing grants covering 80 percent of unemployed workers' salaries up to a total of £2,500 ($3,084) a month. The package also reportedly contains statutory sick pay for employees that have been told to self-isolate. Moreover, employers who have either suspended or reduced operations, qualify for reduction of their employee's pay to 80% of their salary or GBP 2,500 per month, whichever is less. This sum can later be claimed by the employer to cover the ongoing salary costs

b. Bulgaria's central government will bear up to 60% of the employee's gross wages while the employers paying the balance 40%, for a three months period.
c. Canada will give $2,000 CAD ($1,433 USD) each month for up to four months to those who have lost jobs due to the epidemic. Moreover, private businesses which have faced a revenue decline of up to 30% or more in March, April or May are eligible for a temporary wage subsidy for remuneration paid from March 15 to June 16.
d. In Australia, small and medium businesses with an aggregate annual turnover under AUD 50 million, qualify for wage subsidy. Out of the qualifying/eligible businesses, ones that withhold tax on their employee's wages, will receive 50% of the amount withheld; while the ones that do not withhold any tax, will receive a minimum payment of AUD 2,000. Current scheme to expire in June, 2020.
e. Denmark has pledged to pay from 75 to 90 percent of employees' salaries up to a monthly amount of 26,000 Danish kroner ($3,288 USD). Their government will bear 75% of the monthly salary while the employer will meet the balance 25%. The said scheme is even more generous for casual hourly workers i.e. 90% of the tab to be picked up by the government.
f. France will pay 70 percent of an employee's gross salary to a monthly maximum of €6,927 ($7,575 USD).
g. Germany will pay 67 percent of net wages up to a maximum of €6,700 per month ($7,326.78 USD).

h. Ireland will give 70 percent of employee salaries up to a maximum of €410 per week ($448.36 USD).
i. Italy has pledged up to 80 percent of an employee's salary for nine weeks up to a maximum of €1,130 net per month ($1,236.05 USD). Self-employed workers will be given a one-off payment of €600 ($656.31 USD).
j. The Netherlands will give companies up to 90 percent of each workers' wages.
k. The government of New Zealand has introduced a wage subsidy scheme only for those businesses that can show a 30% decline in their revenue for any month in the first half of 2020, relative to the preceding year.
l. Spain will pay up to 70 percent of salaries with a monthly maximum of €1,412 per month ($1,544.09 USD).
m. South Korea will pay unemployed people up to KRW 130,000 per day ($107.31 USD) up to 70% of their daily wage.

Besides the above listed, countries such as Fiji, Peru, South Africa, Sweden have also implemented wage subsidy mechanisms. It is the responsibility of the government of India to take necessary affirmative action to support its citizens during the ensuing crisis and such a responsibility cannot be assigned to private establishments alone.

PARAWISE REPLY

1. The contents of Para 1 are admitted to the extent of whatever is part of the public record. The notifications cited by the Petitioners are advisory in nature. Appeals of the Hon’ble Prime Minister, may

at best, be said to impose a moral or humanitarian responsibility on newspaper establishments. Therefore, it is overreaching and wrong to allege that illegal or inhuman treatment is being meted out by all employers in the newspaper and media industry. In any case, the answering respondent being a body representative, possess details of each and every contractual agreement entered into by newspaper establishments across the country, nor does it have details of actions taken by individual newspapers, magazines, online media outlets, and other employers in this regard. Specific responses for such blanket allegations can only be sought upon the joinder of necessary parties.

1A. That the answering respondent cannot reply to Para 1A of the Petition for want of knowledge.

2. That the contents of Para 2 of the petition are denied as no cause of action ever arose against any newspaper establishment, let alone the answering Respondent. The notifications of the government and appeals made by the Hon'ble Prime Minister are in the nature of advisories and not backed by law. There is no provision in law, either under the Disaster Management Act, 2005 or the Epidemic Diseases Act which prohibits retrenchment of employees or imposition of wage cuts. Thus, no cause of action has arisen, and certainly not against the answering respondent as the answering respondent has neither advised nor encouraged newspaper establishments to take any adverse action against their workers or employees. Therefore, the answering respondent is not an appropriate party against whom relief may be sought.

3-6. That the contents of Paras 3-6 of the Petition warrant no reply from the answering Respondent.

7. That the contents of Para 7 of the Petition are highly misleading. Respondent no. 2 does not have directory powers over its members and is in the nature of a forum on which the members interact. The answering respondent has no control over its members and does not have the right to represent any one or more of them or to speak on their behalf. The answering respondent is not privy to the business conditions of its members and has no means to either ascertain or direct a state of affairs of its members. As per the Memorandum of Association ("MoA") of the answering respondent, the limited objects of the society are:

"*a) To act as a central organization of the Press of India and of any other country in Asia, which desires to associate itself with the Society.*

b) To promote and safeguard the business interests of its members incidental to the production of their publications and to take suitable steps in respect of such business as are affected by the action of Legislatures, Governments, the Law Courts, Municipal and local bodies and Associations or Organizations, commercial or formed for any other purpose.

c) To collect information upon all topics having a practical business interest for its members and to communicate the same to them.

d) To promote co-operation in all matters affecting the common business interests of members.

e) To hold periodical conferences of its members to discuss and determine action on matters of common business interest.

f) To make rules and regulations and bye-laws to govern the conduct of its members in accordance with the decisions of the Society, to provide penalties for the infringement thereof and to provide means of determining whether there has been such infringement.

g) To maintain a permanent secretariat in India to watch over the business interests of members and to permit of a constant interchange of information and views.

h) To invest and deal with the assets of the Society in such manner as may from time to time be determined by the Committee of the Society and to operate Current or Fixed Deposit Accounts with any Bank or Banks or in Government Securities as approved by the Committee.

i) To subscribe, become a member of or otherwise co-operate with any other Association whose objects are wholly or in part similar to those of the Society.

j) To collect subscriptions and other contributions from its members for the recurring and incidental expenses of the Society.

k) To undertake any arbitration for settlement of general or special disputes arising between members of the Society.

l) To provide for the grant of any pension, gratuity, allowances bonus or other payment to or for the benefit of the employees of the Society as deemed expedient whether they have or have not a legal claim upon the Society for such grants.

m) To borrow or raise or secure the payment of money which may be required for the purposes of the Society in such manner as the Society may think fit.

n) To undertake and execute any Trust which may lawfully be undertaken by the Society and may be conducive to its objects.

o) To do or concur in doing all such other things as may be considered conducive or incidental to the attainment of the aforesaid objects or to the business interests of newspapers and periodicals in general or of the Society or any of its members in particular."

The relevant portionof the MoA of the answering Respondent is annexed herewith as **Annexure-R2/3** on page numbers **50-51**.

8. That the contents of Paras 8 of the Petition warrant no reply from the answering Respondent however it may be noted that that a blanket protection, as prayed for, would be violative of Article 19 and 14 of the Constitution of India. A blanket protection would unreasonably limit the ability of the employer to rightfully take action against indiscipline, non-cooperation, insubordination etc.

9. That the contents of Para 9 of the Petition are admitted to the extent of whatever forms part of the public record, but it is to be noted that the appeal of the Prime Minister dated 14.04.2020 is in the nature of a moral and humanitarian plea - an advisory at best.

10. That the contents of Para 10 of the Petition are admitted to the extent of whatever forms part of the public record, but it is to be noted that the appeal of the Prime Minister dated 23.03.2020 is in the nature of a moral and humanitarian plea - an advisory at best.

11. That the contents of Para 11 of the Petition are admitted to the extent of whatever forms part of the public record, however, it is pertinent to note that the Petitioners by their own admission have referred to the said notification as an “advisory”. The government through such advisories can, at most, impose a moral obligation on private enterprises and organizations, and such a notification cannot be enforceable by law. This Hon’ble Court in ***Raghunath rao Ganpat rao and Ors. vs. Union of India (UOI) AIR 1993 SC 1267***observed as under:

> *“Morality in general is the art of directing the actions of men in such a way as to produce the greatest possible sum of good. Legislation ought to have precisely the same object. But although these two arts, or rather sciences, have the same end, they differ greatly in extent. All actions, whether public or private, fall under the jurisdiction of morals. It is a guide which leads the individual, as it were, by the hand through all the details of his life, all his relations with his fellows.*
>
> *Legislation cannot do this; and, if it could, it ought not to exercise a continual interference and dictation over the conduct of men. Morality commands each individual to do all that is advantageous to the community, his own personal advantage included. But there are many acts useful to the community which legislation ought not to command. There are also many injurious actions which it ought not to forbid, although morality does so. In a word legislation has the same center with morals, but it has not the same circumference.”*

12-14. That the contents of Paras 12-14 of the Petition are part of public record and therefore require no reply. However it is

pertinent to mention here that it is settled law that if the object of the contract is lost, the contract is frustrated. Such premise is derived from Section 56 of the Indian Contract Act through the Doctrine of Frustration. In the case of ***Satyabrata Ghose vs. Mugneeram Bangurn& Co &Anr., (AIR 1954 SC 44)***it was held that 'impossible' has not been used in Section 56 of the Act in the sense of physical or literal impossibility. The performance of an act may not be literally impossible but it may be impracticable and useless, and if an untoward event or change of circumstances totally upsets the very foundation upon which the parties rested their bargain, it can very well be said that the promisor finds it impossible to do the act which he promised to do.

15. That the contents of Para 15 are a part of public record and therefore warrant no reply.

16. That the contents of Para 16 are denied for being false and baseless, except for anything that forms part of the public record. It is submitted that the answering respondent does not possess the requisite data to appropriately defend each of the newspaper establishments that are being alleged to have violated government advisories. It is reiterated that the notification dated 23.03.2020 being only in the nature of an advisory, at most can only impose a moral obligation on private enterprises and organizations, and is therefore not enforceable against them.

17. That the contents of Para 17 are denied for want of knowledge and the Petitioners are put to strict proof of the same. The Petitioners have vaguely cited seven (7) instances of actions taken by establishments in the media sector. Three (3) of these are

entirely online, electronic or digital platforms. It is pertinent to mention here that that only 3 of these individual newspapers namely Indian Express, Times of India and Sakal are members of the Respondent No. 2 Society It is submitted that the Members of the answering respondent comprises of owners and proprietors of print media alone and therefore is not an appropriate party to respond to allegations against establishments it does not represent. Regarding four (4) establishments, information has been quoted from various online articles whose authenticity is questionable. Therefore, the Petitioners are put to strict proof of the same. Even in respect of the averments made against the named newspapers, the answering respondent is in no position to either confirm or deny them as the same are not and can not be in the knowledge of the answering respondent. It is a basic precept that if allegations are made against a person, notice must be issued to such person and therefore the omission to implead such named persons is *mala fide*.

18. That the contents of para 18 are denied as there are no mandatory directions of the government which may be enforceable in law. The answering respondent is mindful of the hardships being faced by the industry as a whole. Without prejudice to whatever has been stated herein, for violations under the Industrial Disputes Act, 1947, the workmen or newspaper employees ought to seek the remedy as provided for in the said enactment. This Hon’ble Court has time and again held that where a specific right arises out of a specific enactment, the remedy for agitation of the said right can only be sought in the said enactment. As a matter of fact, if industrial establishments of the various newspapers in the country are examined, a considerable chunk of such establishments falls

within the category of establishments employing less than 50 workmen or between 50-100 workmen. The Petition proceeds on the assumption that all industrial establishments of all newspapers are factories employing more than 100 workmen in the preceding 12 months and are therefore covered by Chapter VB of the Industrial Disputes Act, 1947. As per the Industrial Disputes Act, 1947 there are three categories of industrial establishments, however the Petitioners have considered only one such category. The Petitioners have failed to consider that the other two classes, namely industrial establishments which are not necessarily "factories" as defined by the Factories Act - (i) having 50 to 100 workmen and (ii) those having less than 50 workmen, have the liberty as per the Act to enforce retrenchments, closures and lay-offs without seeking the government's prior permission. By laying the Petition and seeking the reliefs prayed for, the Petition therefore wrongly urges this Court to legislate the application of Chapter VB of the Industrial Disputes Act, 1947 to establishments that are not covered under the said Chapter.

That this Hon'ble Court in ***The Premier Automobiles Ltd. vs. KamlekarShantaramWadke of Bombay and Ors. [1976]1SCR 427*** has held that a Civil Court will have no jurisdiction to try and adjudicate upon an industrial dispute if it concerned enforcement of certain right or liability created only under the Act. The relevant para of the said judgment is as follows:

> *"23. To sum up the principles applicable to the jurisdiction of the Civil Court in relation to an industrial dispute may be stated thus:*

(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil Court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created Under the Act. then the only remedy available to the suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute. as the case may be.

In ***Rajasthan State Road Transport Corporation and others vs. DeenDayal Sharma***, reported in ***(2010)6 SCC 697***, this Hon'ble Court categorically held:

> *"14…. In the instant case, the respondent who hardly served for three months, has asserted his right that the departmental enquiry as contemplated under the Standing Orders, ought to have been held before issuing the order of dismissal and in absence thereof such order was liable to be quashed. Such right, if available, could have been enforced by the respondent only by raising an industrial dispute and not in the civil suit. In the circumstances, it has to be held that the civil Court had*

no jurisdiction to entertain and try the suit filed by the respondent."

19-24. That the contents of Paras 19-24 cannot be replied to by the answering Respondents at this stage for want of knowledge. The Petition relies upon reports appearing on some website, the veracity of which is unknown and unknowable. As a matter of fact, without in any way subscribing to or admitting the veracity of any of the quoted reports, a case in point is the obvious mistake admitted by the said website as evidenced in Annexure P7 where the report at page 53 in a post script admits a prior misreporting. Further as in Annexure P6 at page 51 the report admits that the management refuted rumors that formed the basis of the report and it considered the same "negative news" and "false allegations".

It is reiterated here that the answering respondent does not possess the requisite data to appropriately defend each of the newspaper establishments that have allegedly violated government advisories. Without prejudice to whatever has been stated herein, it is submitted that if any of the rights of the workmen or newspaper employees under the Industrial Disputes Act, 1947 or Working Journalists Act, 1955 have been violated, they may seek the relevant remedies as provided for under the said enactments.

25. That to seek redressal for any alleged violations of rights under Industrial Disputes Act, 1947 or Working Journalists Act, 1955, the remedies lie within the enactments itself and the workmen or newspaper employees ought to approach the appropriate forum, as provided for in the said enactments, for the enforcement of remedies, if any. In any case, the Petitioners have failed to make note of Section 25M of the Industrial Disputes Act, 1947 which

recognizes the right of employers to lay-off their employees as a result of a natural calamity. It must also be noted that a right that has been conferred pursuant to a statute cannot be abrogated by an Order of an instrumentality of State, save and except by due process of law. It must also be noted that the provisions of lay-off, retrenchment and closure under the Industrial Disputes Act, 1947 may not apply to all newspaper establishments. consideration needs to be placed on the fact that a large number on newspaper establishments are small establishments having no factory of their own and/ or do not employ more than 100 workers and therefore do not, as per Sections 25L and 25K, qualify to be covered under the provisions of Chapter V-B of the Industrial Disputes Act. The Petitioners may seek redressal for any alleged violations under the cited provision of the Industrial Disputes Act, 1947 before the appropriate forum and against the appropriate parties.

26. That the contents of Para 26 are a matter of public record, however, it must be noted that the provisions of lay-off, retrenchment and closure under the Industrial Disputes Act, 1947 may not apply to all newspaper establishments. consideration needs to be placed on the fact that a large number on newspaper establishments are small establishments having no factory of their own and/ or do not employ more than 100 workers and therefore do not, as per Sections 25L and 25K, qualify to be covered under the provisions of Chapter V-B of the Industrial Disputes Act. The Petitioners may seek redressal for any alleged violations under the cited provision of the Industrial Disputes Act, 1947 before the appropriate forum and against the appropriate parties.

27. That the contents of Para 27 are a matter of public record, however, it is reiterated that the provisions of lay-off, retrenchment

and closure under the Industrial Disputes Act, 1947 may not apply to all newspaper establishments. consideration needs to be placed on the fact that a large number on newspaper establishments are small establishments having no factory of their own and/ or do not employ more than 100 workers and therefore do not, as per Sections 25L and 25K, qualify to be covered under the provisions of Chapter V-B of the Industrial Disputes Act. The Petitioners may seek redressal for any alleged violations under the cited provision of the Industrial Disputes Act, 1947 before the appropriate forum and against the appropriate parties.

28.That the contents of Para 28 are a matter of public record. Without prejudice to whatever has been stated herein, it is however submitted that to seek redressal for violation of the said provisions of the WJ Act, 1955, the workmen/employees of newspaper establishments ought to approach the appropriate forum, as provided for in the said enactments.

29. That the Petitioners have by their own admission referred to the notifications of the governments as mere advisories and therefore it is wrong to allege that the answering respondent has violated any law. At this stage, the answering respondent is unable to answer to the allegations and averments made by the Petitioners in Para 29, as it is only the establishments themselves who possess the requisite data to appropriately defend the alleged violations.

REPLY TO GROUNDS:

30. The contents of the grounds clause of the Petition are answered to as follows:

A. That the contents of Para 30(A) are a matter of public record.

B. That while it is true and a matter of public record that media houses have been exempted from lockdown and are permitted to continue operations, there is no law which prohibits shutting down of newspaper establishments under such exceptional circumstances. It must be noted that the circumstances due to the pandemic have caused revenue from advertisements and other sources to dry up, and print media has particularly suffered immense losses.

C. That the speeches of the Hon'ble Prime Minister are a matter of public record, however, they may at best be said to impose a moral or humanitarian responsibility on newspaper establishments. The appeals of the PM are not backed by any provisions of law so as to make them enforceable against newspaper establishments.

D. That the advisories issued by the Ministry of Labour and Employment, Government of India, as per the Petitioners' own admission are advisories and at most can only impose a moral/humanitarian obligation on private enterprises and organizations, and are therefore not enforceable against them. This Hon'ble Court in ***RaghunathraoGanpatrao and Ors. vs. Union of India (AIR 1993 SC 1267)*** observed as under:

> *"Morality in general is the art of directing the actions of men in such a way as to produce the greatest possible sum of good. Legislation ought to have precisely the same object. But although these two arts, or rather sciences, have the same end, they differ greatly in extent. All actions, whether public or private, fall under the jurisdiction of morals. It is a guide*

which leads the individual, as it were, by the hand through all the details of his life, all his relations with his fellows.

Legislation cannot do this; and, if it could, it ought not to exercise a continual interference and dictation over the conduct of men. Morality commands each individual to do all that is advantageous to the community, his own personal advantage included. But there are many acts useful to the community which legislation ought not to command. There are also many injurious actions which it ought not to forbid, although morality does so. In a word legislation has the same center with morals, but it has not the same circumference."

Further, without prejudice to whatever is stated herein above, this Hon'ble Court in the case of ***Supdt. of Taxes v. OnkarmalNathmal Trust, (1976) 1 SCC 766*** has held that:

"62. The law in its most positive and peremptory injunctions,is understood to disclaim, as it does in its general aphorisms, alt intention of compelling performance of that which is impossible.

"...where the law creates a duty or charge, and the party is disabled to, perform it, without any default in him, and has no remedy over, there the law will in general excuse him, and though impossibility of performance is in general no excuse for not performing an obligation which a party has expressly undertaken by contract, yet when the obligation is one implied by law, impossibility of performance is good excuse.

Under certain circumstances compliance with the provisions of statutes which prescribe how something is to be done will be excused. Thus, in accordance with the maxim of law, lex non cogitadimpossibilia, if it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like the act of God or the King's enemies, these circumstances will be taken as a valid excuse".

E-F. That the answering Respondent does not possess the requisite data to appropriately defend against the allegations levelled in paras Paras 30 (E) and (F), however it is submitted that to seek redressal for any alleged violations of rights under Industrial Disputes Act, 1947 or Working Journalists Act, 1955, the remedies lie within the enactments itself and the workmen or newspaper employees ought to approach the appropriate forum, as provided for in the said enactments, for the enforcement of remedies, if any. In any case, the Petitioners have failed to make note of Section 25M of the Industrial Disputes Act, 1947 which recognizes the right of employers to lay-off their employees as a result of a natural calamity. It must also be noted that a right that has been conferred pursuant to a statute cannot be abrogated by an Order of an instrumentality of State, save and except by due process of law. It must also be noted that the provisions of lay-off, retrenchment and closure under the Industrial Disputes Act, 1947 may not apply to all newspaper establishments. consideration needs to be placed on the fact that a large number on newspaper establishments are small establishments having no factory of their own and/ or do not employ more than a 100 workers and therefore do not, as per

Sections 25L and 25K, qualify to be covered under the provisions of Chapter V-B of the Industrial Disputes Act. The Petitioners may seek redressal for any alleged violations under the cited provision of the Industrial Disputes Act, 1947 before the appropriate forum and against the appropriate parties.

G. That in respect of para 30(G), it is stated that Section 16A of the WJ Act is sought to be misread by the Petitioner. The correct reading is that once a wage board award is notified and is made enforceable, an employer is prohibited from separating his employees in order to avoid bearing the financial implication of having to pay the enhanced wages. This section cannot be given such a wide interpretation as to render the provisions of the ID Act in respect of severance provisions relating to newspaper establishments nugatory.

That the Petitioners may seek redressal for any alleged violations under the cited provisions of the Industrial Disputes Act, 1947 and the Working Journalists Act, 1955 before the appropriate forum and against the appropriate parties. This Hon'ble Court has time and again held that where a specific right arises out of a specific enactment, the remedy for agitation of the said right can only be sought in the said enactment.

In ***Rajasthan State Road Transport Corporation and others vs. DeenDayal Sharma***, reported in ***(2010)6 SCC 697***, this Hon'ble Court categorically held:

> "14… *In the instant case, the respondent who hardly served for three months, has asserted his right that the departmental enquiry as contemplated under the Standing Orders, ought to have been held before issuing the order of dismissal and in*

absence thereof such order was liable to be quashed. Such right, if available, could have been enforced by the respondent only by raising an industrial dispute and not in the civil suit. In the circumstances, it has to be held that the civil Court had no jurisdiction to entertain and try the suit filed by the respondent."

H. That the answering respondent is unable, at this stage, to answer to para 30(H) of the petition as it does not possess the requisite and relevant data with respect to the terms of service and appointment letters/ contracts of the workmen and newspaper employees allegedly being subjected to reduction of wages, termination of services and forced unpaid leave.

I. That sufficient time ought to be granted to the answering respondent because at this stage, it does not possess the requisite data to appropriately defend each of the newspaper establishments that have allegedly taken arbitrary actions in terms of Para 30(I) of the Petition.

J. That the contents of Para 30(J) are denied for being false and misleading. That emergency situations like the present calamity being faced by the world, affect everyone alike, whether be employee or employer. The disregard to the employers' plight could drive the establishment to the ground and could result in the breakdown of the media industry. Journalism forms the fourth pillar of democracy, and letting these establishments run into the ground could lead to horrible ramifications for the media industry. The lack of business due to the lockdown, the impact on business due to COVID – 19 and the continued payment of salaries and wages could potentially drive the private establishments into

insolvency. A proper balance ought to be struck between the freedom guaranteed in Article 19(1)(a) and the social control permitted by clause 19(6) of Constitution of India. Unless media houses take steps to ensure their long-term survival, especially in the absence of advertising revenue and in a situation of lack of financial support from the Government, their demise will mean that the right of Article 19(1)(a) will be lost. Circumstances are so bad that let alone giving media houses financial support, the various governments must pay newspapers the hundreds of crores of Rupees for advertisements already carried. As per various industry estimates, Directorate of Advertising and Visual Publicity ("DAVP") owes between Rs. 1,500 and Rs. 1,800 crores to various media companies. A large chunk of this i.e. Rs. 800-900 crore is owed to the print industry alone. Such amounts have been outstanding for several months and there is little prospect of realising the same any time soon. Further, not only has the government drastically reduced advertising since much prior to the crisis, there are calls by political parties to stop government advertising altogether in order to save money.

31. That the answering respondent cannot reply to Para 31 of the Petition for want of knowledge.

32. That in light of the facts and circumstances, it most humbly prayed that this Hon'ble Court may be pleased to dismiss and dispose of the present writ petition in favour of the answering Respondent.

DEPONENT

13/5/2020.

THE INDIAN NEWSPAPER SOCIETY
NEW DELHI
110001
RAFI MARG

Verification:

I, the above-named Deponent, do hereby verify that the contents of the above counter Affidavit are true and correct to the best of my knowledge; that no part of it is false and that nothing material has been concealed therefrom.

Verified at New Delhi on 13.05.2020.

DEPONENT

13/5/2020

THE INDIAN NEWSPAPER SOCIETY
NEW DELHI
110001
RAFI MARG

INS
THE INDIAN NEWSPAPER SOCIETY

Shailesh Gupta
President
L. Adimoolam
Deputy President
D. D. Purkayastha
Vice President
Naresh Mohan
Honorary Treasurer
Mary Paul
Secretary General

December 07, 2019

Extracts of the minutes of the 619th Meeting of the Executive Committee of the Indian Newspaper Society (INS) held on 26.07.2019 at New Delhi :-

"RESOLVED that Ms. Mary Paul Pudicherry, Secretary General and Mr.Yogesh Bhaskar Pawaskar - Deputy Secretary are hereby singly authorized to sign any contract/agreement and also institute, file, prosecute, defend and to sign, verify and/or to execute any and all pleadings, suits, written statements, petitions, applications, criminal complaints, replies, appeals, declarations, deeds, papers, vakalatnamas and all other such documents whatsoever, as may be required to be filed in connection with any legal proceedings, civil and/or criminal instituted by or against the Indian Newspaper Society, including arbitration proceedings and/or to compromise all such proceedings and to represent the company in all such matters and other matters incidental thereto as may be considered necessary and expedient."

(Yogesh Bhaskar Pawaskar)
Deputy Secretary

THE INDIAN NEWSPAPER SOCIETY NEW DELHI 110001 RAFI MARG

GOVERNMENT OF MAHARASHTRA
Department of Revenue and Forest, Disaster Management, Relief and Rehabilitation, Mantralaya, Mumbai- 400 032
No: DMU/2020/CR. 92/DisM-1, Dated: 18th April 2020

ORDER

Addendum to Cnsolidated Revised Guidelines on the measures to be taken for containment of COVID-19 in the State

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Reference:

1. This Department's Order No: DMU/2020/CR. 92/DisM-1, Dated: 17th April 2020

ADDENDUM

In continuation of the consolidated guidelines issued for measures to be taken for containment of COVID-19 in the state referred in reference number 1 above, the following are added.

1. Print media is hereby exempted from the lockdown from 20 April 2020. However given the extent of the spread of Covid 19, door to door delivery of newspapers and magazines is prohibited.

2. Commissioners of all departmental Commissionerates and Directors of Directorates shall attend office with 10% of their staff.

BY ORDER AND IN THE NAME OF THE GOVERNOR OF MAHARASHTRA

(AJOY MEHTA)
CHIEF SECRETARY
GOVERNMENT OF MAHARASHTRA

Copy to:

1. Principal Secretary, to Hon'ble Governor of Maharashtra, Mumbai.
2. Hon'ble Chairman, Maharashtra Legislative Council
3. Hon'ble Speaker, Maharashtra Legislative Assembly
4. Principal Secretary to Hon'ble Chief Minister, Government of Maharashtra
5. Secretary to Hon'ble Deputy Chief Minister, Government of Maharashtra
6. Private Secretary to Leader of Oppostion, Legislative Council / Assembly
7. Private Secretaries of All Hon'"ble Minister/Minister of State, Mantralaya

GOVERNMENT OF MAHARASHTRA
Department of Revenue and Forest, Disaster Management, Relief and Rehabilitation, Mantralaya, Mumbai- 400 032
No: DMU/2020/CR. 92/DisM-1, Dated: 21st April 2020

ORDER

Amendment to the Consolidated Revised Guidelines on the measures to be taken for containment of COVID-19 in the State

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Reference:

1) **Notification No: DMU/2020/CR. 92/DisM-1, Dated 25th March 2020 and 15th April 2020**
2) **Order No: DMU/2020/CR. 92/DisM-1, Dated 17th April 2020**
3) **Addendum Order No: DMU/2020/CR. 92/DisM-1, Dated: 18th April 2020**

In continuation to the Order No. DMU-2020/C.R.92/DMU-1, dated 17th April, 2020 and addendum dated 18th April 2020 of the State Government and in exercise of the powers, conferred under the Disaster Management Act, 2005 the undersigned, in his capacity as Chairperson, State Executive Committee, hereby issues the following orders:-

A. Following amendments to the above referred order number 1 dated 17th April, 2020 shall come into force with immediate effect.

1. In view of large number of people commuting because of the relaxation issued vide order dated 17th April 2020 and also the imminent threat of further spread of the pandemic it is hereby directed in so far as ***Mumbai Metropolitan Region (MMR) and the Pune Metropolitan Region (PMR)*** area is concerned the orders issued on 17th April 2020 shall not apply and the position prevailing prior to the issuance of 17th April 2020 Order shall be reinstated. All enforcing authorities shall ensure that these instructions are followed scrupulously. These guidelines dated 17th April 2020 however will remain operative in other parts of the state.
2. Para14 (v) shall read as follows, "E-Commerce Companies. Vehicles used by Ecommerce operators will be allowed to ply with necessary permission. E-Commerce delivery of essential commodities, food, pharmaceuticals and medical equipment will be permitted."
3. Para 14 (xiii) is deleted.

B. Following amendments to the above referred order number 2 dated 18th April, 2020 shall come into force with immediate effect.

Para 1 shall read as follows, "print media is hereby exempted from the lockdown from 20th April, 2020. Wherever door to door delivery is done, it shall be with the knowledge of receiver and the delivery of newspaper personnel, shall wear mask and use hand sanitizer and maintain social distancing. However, given the extent of spread of COVID-19, door to door delivery of newspapers and magazines is prohibited in Mumbai Metropolitan Region (MMR), Pune Municipal Corporation (PMC) and in all containment zones as may be decided by the District Magistrates. In these areas they may be sold through the establishments that are exempted under the Order dated 17.04.2020."

BY ORDER AND IN THE NAME OF THE GOVERNOR OF MAHARASHTRA.

(AJOY MEHTA)
CHIEF SECRETARY
GOVERNMENT OF MAHARASHTRA

Copy to:

1. Principal Secretary to Hon'ble Governor of Maharashtra, Mumbai,
2. Hon'ble Chairman, Maharashtra Legislative Council,
3. Hon'ble Speaker, Maharashtra Legislative Assembly,
4. Principal Secretary to Hon'ble Chief Minister, Government of Maharashtra,
5. Secretary to Hon'ble Deputy Chief Minister, Government of Maharashtra,
6. Private Secretary to Leader of Oppostion, Legislative Council / Assembly,
7. Private Secretaries of All Hon'ble Minister/Minister of State, Mantralaya,
8. All Additional Chief Secretaries/Principal Secretaries/Secretaries of Government of Maharashtra, Mantralaya,
9. Director General of Police, Maharashtra State , Mumbai,
10. Principal Secretary, Public Health Department, Mantralaya,
11. Secretary, Medical Education, Mantralaya,
12. All Divisional Commissioners in the State,
13. All Commissioners of Police in the State,
14. All Commissioners of Municipal Corporations in the State,
15. All District Collectors,
16. All Chief Executive Officers, Zilla Parishad,
17. All District Superintendents of Police in the State.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF THE INDIAN NEWSPAPER SOCIETY

Registered under the Companies Act on October 12, 1951 (With upto date amendments)

July, 2007

MEMORANDUM OF ASSOCIATION OF THE INDIAN NEWSPAPER SOCIETY

1. The name of the Company (hereinafter called "the Society") is **The Indian Newspaper Society.**
2. The registered office of the Society will be situated in the State of Delhi.
3. The objects for which the Society is established are:
   (a) To act as a central organization primarily of the press of India, and of any other country in Asia, which desires to associate itself with the Society.
   (b) To promote and safeguard the business interests of its members incidental to the production of their publications and to take suitable steps in respect of such business as are affected the action of Legislatures, Governments, Law Courts, Municipal and local bodies and Associations or Organizations, commercial or formed for any other purpose.
   (c) To collect information upon all topics having a practical business interest for its members and to communicate the same to them.
   (d) To promote co-operation in all matters affecting the common business interest of its members.
   (e) To hold periodical conferences of its members to discuss and determine action on matters of common business interest.
   (f) To make rules and regulations and bye-laws to govern the conduct of its members in accordance with the decisions of the Society, to provide penalties for the infringement thereof and to provide means of determining whether there has been such infringement.
   (g) To maintain a permanent secretariat in India to watch over the business interest of its members and to permit of a constant interchange of information and views.
   (h) To purchase, take on lease or hire or otherwise acquire or build any movable or immovable property for the purpose of the Society, and sell, improve, manage, develop, lease, mortgage, charge, dispose of or otherwise deal with all or any such property in the business interest of the Society.
   (i) To invest and deal with the assets of the Society in such manner

as may from time to time be determined by the Committee of the Society and to operate Current or Fixed Deposit Accounts with any Bank or Banks or in Government Securities as approved by the Committee.

(j) To subscribe, become a member of or otherwise co-operate with any other Association whose objects are wholly or in part similar to those of the Society.

(k) To collect subscriptions and other contributions from its members for the recurring and incidental expenses of the Society.

(l) To undertake any arbitration for the settlement of general or special disputes arising between members of the Society.

(m) To provide for the grant of any pension, gratuity, allowances, bonus or other payment to or for the benefit of the employees of the Society as deemed expedient whether they have or have not a legal claim upon the Society for such grants.

(n) To borrow or raise or secure the payment of money which may be required for the purposes of the Society in such manner as the Society may think fit.

(o) To undertake and execute any Trust which may lawfully be undertaken by the Society and may be conducive to its objects.

(p) To do or concur in doing all such other things as may be considered conducive or incidental to the attainment of the aforesaid objects or to the business interests of newspapers and periodicals in general or the Society or any of its members in particular.

4. The income and property of the Society, wheresoever derived, shall be applied solely towards the promotion of the objects of the Society as set forth in this Memorandum of Association, and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus, or otherwise howsoever by way of profit to the members of the Society, provided that nothing herein contained shall prevent the payment, in good faith, of remuneration to any officer or servant of the Society in return for any services actually rendered to the Society.

5. Membership of the Society shall be restricted to individual, firms, or companies who own and carry on the business of the Management of a newspaper or newspapers or periodicals, and no other individual, firm, or Company shall be entitled to become or be or remain a member of the Society.

6. The liability of the members is limited.

7. Every member of the Society undertakes to contribute to the assets of the Society, in the event of its being wound up while he is a member, or within one year afterwards, for the payment of the debts and liabilities of the Society contracted before he ceased to be a member and of the costs, charges and expenses of winding up and for adjustments of the rights of the contributories among themselves, and such amount as may be required, not exceeding in the case of each member Rs.10 (Rs. Ten only)

8. In the case of the winding up or dissolution of the Society which can be done only by a Resolution carried at an Extraordinary General Meeting of the Society, all liabilities of the Society shall first be satisfied from the Society's funds, and the balance of the assets left therefrom shall not be paid to or distributed among the members of the Society but shall be given or transferred to some other institution or institutions having objects similar to the objects of the Society, or to some charitable object, determined in either case by the Society at the aforesaid General Meeting.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this Memorandum of Association.

Names of the Subscribers	Addresses and Description	Witnesses
1. Mr. R.N. Goenka	"Express Newspapers Ltd", Chennai	
2. Mr. P.N.Mehta	"Times of India", Mumbai	
3. Mr. Deshbandhu Gupta	"Indian News Chronicle", Delhi	
4. Mr. Devadas Gandhi	"Hindustan Times", New Delhi	
5. Mr. J.K. Cowley	"Statesman", New Delhi	
6. Mr. K. Narendra	"Pratap", New Delhi	
7. Mr. J.L.Gupta	"Daily Tej", New Delhi	